

**UNITED STATES DISTRICT COURT  
NORTHERN DISTRICT OF OHIO  
EASTERN DIVISION**

DUSTIN HAYES,	)	CASE NO. 5:17CV2035
	)	
Petitioner,	)	JUDGE DONALD C. NUGENT
	)	
v.	)	MAGISTRATE JUDGE
	)	GEORGE J. LIMBERT
WARDEN MICHELLE MILLER,	)	
	)	<u>ORDER ADOPTING</u>
Respondent.	)	<u>REPORT AND</u>
	)	<u>RECOMMENDATION</u>

This matter comes before the Court upon the Report and Recommendation of Magistrate Judge George J. Limbert. (ECF #11). The Report and Recommendation, issued on October 26, 2018, is hereby ADOPTED by the Court. Petitioner's Motion to stay is therefore DENIED.

**Procedural History**

On September 20, 2017, Petitioner Dustin Hayes filed a petition for a writ of federal habeas corpus under 28 U.S.C. § 2254. (ECF #1). The Respondent, Warden Michelle Miller, Belmont Correctional Institution, filed a return of writ on January 18, 2018. (ECF #7). Petitioner filed a traverse to Respondent's return of writ on March 28, 2018. (ECF #9). On April 30, 2018, Mr. Hayes filed the instant motion requesting a stay in order to return to the Ohio state courts to resolve another matter relating to an alleged mistake in a plea charging instrument. (ECF #10 at 1). Magistrate Judge George J. Limbert recommended the Court deny Mr. Hayes' motion to stay in a Report and Recommendation filed on October 26, 2018. (ECF #11). No objections to the

report and recommendation were filed and this matter is now ripe for review.

### **Standard of Review for a Magistrate Judge's Report and Recommendations**

The applicable standard of review of a magistrate judge's report and recommendation depends upon whether objections were made to that report. When objections are made to a report and recommendation of a magistrate judge, the district court reviews the case *de novo*. FED. R. Civ. P. 72(b) states:

The district judge must determine *de novo* any part of the magistrate judge's dispositions that has been properly objected to. The district judge may accept, or modify the recommended disposition; receive further evidence; or return the matter to the magistrate judge with instructions.

However, "when no timely objection is filed, the court need only satisfy itself that there is no clear error on the face of the record in order to accept the recommendation." Fed. R. Civ. P. 72 advisory committee's notes (citations omitted).

The U.S. Supreme Court stated: "It does not appear that Congress intended to require district court review of magistrate judge's factual or legal conclusions, under a *de novo* or any other standard, when neither party objects to these findings." *Thomas v. Arn*, 474 U.S. 140, 150 (1985). Here, neither party objected to the magistrate judge's Report and Recommendation. Accordingly, this Court reviews the Report and Recommendation for a finding of clear error on the face of the record.

### **Discussion**

The Court has carefully reviewed the Report and Recommendation and agrees with the findings set forth therein. The Court finds Magistrate Judge Limbert's Report and Recommendation to be thorough, well-written, well-supported, and correct. After careful evaluation of the record and having found no clear error, the Court ADOPTS the Report and

Recommendation in its entirety. The Petitioner's motion to stay is, therefore, DENIED.

IT IS SO ORDERED.

/s/DONALD C. NUGENT  
DONALD C. NUGENT  
United States District Judge

DATED: November 15, 2018